

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GARY PAUL SMITH,

Plaintiff,

v.

MUNICIPALITY OF FRESNO, et al.,

Defendants.

No. 2:21-cv-1992 KJM AC P

ORDER

Plaintiff, a former state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

For the following reasons, plaintiff will be directed to complete and file an application to proceed in forma pauperis by a non-prisoner. In addition, plaintiff will be ordered to show cause why defendant's motion for summary judgment should not be granted. In the alternative, plaintiff will be given a final opportunity to file a response to defendants' motion for summary judgment.

I. IN FORMA PAUPERIS APPLICATION FOR NON-PRISONER

In December 2022, and in January 2023, plaintiff filed notices with the court that he had changed addresses. ECF Nos. 132, 134. The address provided does not appear to be a prison location. See id. In addition, a search for plaintiff by name and by prison inmate number yielded a "no records found" result. See <https://inmatelocator.cdcr.ca.gov/Results.aspx> (search CDCR

Number field for “H49197” or search Last Name field for “Smith”, First Name field for “Gary”) (last visited March 3, 2023). Accordingly, it appears plaintiff is no longer incarcerated, and he will be directed to file an application to proceed in forma pauperis for non-prisoners. See e.g. Adler v. Gonzalez, 2015 WL 4041772, at *1, 2015 U.S. Dist. LEXIS 85909 (E.D. Cal. July 1, 2015), report and recommendation adopted, 2015 WL 4668668, 2015 U.S. Dist. LEXIS 103386 (E.D. Cal. Aug. 6, 2015) (Case No. 1:11-CV-1915 LJO MJS) (stating released prisoner may proceed under non prisoner provisions of in forma pauperis statute after submitting updated poverty affidavit). Plaintiff will be given thirty days to do so. The Clerk of Court will be directed to send plaintiff the appropriate form.


II. ORDER TO SHOW CAUSE

On January 20, 2023, defendants filed a motion for summary judgment. ECF No. 135. Local Rule 230 requires that plaintiff file either an opposition or a statement of non-opposition. See generally L.R. 230(c), (l). To date, plaintiff has not filed a response to defendants’ motion. Therefore, he will be ordered to show cause why defendants’ motion should not be granted and do so within thirty days. In the alternative, plaintiff may file a response to the motion for summary judgment.

Accordingly, IT IS HEREBY ORDERED that:

1. The Clerk of Court shall send plaintiff a copy of the court’s in forma pauperis application for a non-prisoner;
2. Within thirty days of the date of this order, plaintiff shall file the in forma pauperis application for a non-prisoner with the court, and
3. Within thirty days of the date of this order, plaintiff shall file a showing of cause why defendants’ motion for summary judgment (ECF No. 135) should not be granted. In the alternative, within the same period, plaintiff may file a response to defendants’ motion for summary judgment.

DATED: March 3, 2023


ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE